IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2002 OF 2006

Mrs.Hira Toos Daruvala
through C.A. Zarine Alpaiwala ...Petitioner
V/s.
The State of Maharashtra & Ors. ...Respondents

Mr.V.M. Talreja for the Petitioner.
Mr.P.A. Pol, APP for State-Respondent No.1.
Mr.C.P. Deogirikar for Respondent Nos.2 to 4.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 5, 2007

P.C. :-

. Heard the learned Counsel for the petitioner, the learned Counsel for the added respondents as also the learned APP for the State.

2. The petitioner has filed this petition challenging the order passed by the 2nd Ad-hoc Additional Sessions Judge, Sewree, Greater Bombay, dated 31.8.2006 whereby the Sessions Court rejected the prayer of the petitioner that Flat No.42, 4th floor, Block No.7, Shyam Nivas C.H.S., 51, Bhulabhai Desai Road, Mumbai-26 which was attached and sealed by the police be released and possession be handed over to the petitioner

herein. The Sessions Court by the said order rejected the said application.

3. It is the case of the petitioner that Shri Sorab Behramji Bhaya had executed a Will and bequeathed the said property in favour of the petitioner and execution of the said Will was witnessed by the added respondents no.3 and 4 and respondent no.2 was executor of the said Will. It is the case of the petitioner that accordingly, an application was made by her for transferring the said flat in her name. However, unfortunately, the said Shri Bhaya was murdered and the police put their seal on the said flat. Thereafter, investigation was made by the police and certain accused were arrested in connection with the commission of the said offence. These accused were tried before the Sessions Court and ultimately by judgment and order, the Sessions Court acquitted all the accused and as of today, no criminal case is pending in any court.

3. It is submitted that the applicant, therefore, filed application before the Sessions Court for return

of the said property which was seized by the police. The Sessions Court, however, felt that it was not desirable to restore the possession and to release the flat in favour of the applicant at this stage.

4. This Court had directed the petitioner to add the Executor and the attesting witnesses as party respondents in this petition. Accordingly, the petition was amended and they have been added as party respondents.

5. Shri Deogirikar, learned Counsel for the respondents has filed affidavit on their behalf and has stated that they have no objection if the said flat is released in favour of the petitioner and they have stated therein that the Will was properly executed and the property was bequeathed to the petitioner herein.

6. Under these circumstances, in my view, the order passed by the Sessions Court is liable to be set aside. The police have no authority to illegally continue to put a seal on the property about which there is no

dispute. The society already has transferred the flat in the name of the petitioner and she is the member of the said society. Under the circumstances, the seal which is put by the police is directed to be removed. The impugned order is quashed and set aside. Writ Petition is allowed.

7. The police is directed to handover the aforesaid flat to the petitioner herein forthwith by removing the seal which has been put by them.

8. Petition is allowed in the above terms.

9. Parties to act on the copy of this order duly authenticated by the Associate of this Court.

(V.M. KANADE, J.)